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10/708,836	03/26/2004	Blayn W. Beenau	60655.9900	2835
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EXAMINER
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NGUYEN, NAM V

ART UNIT	PAPER NUMBER
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2635

DATE MAILED: 12/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/708,836	<b>Applicant(s)</b> BEENAU ET AL.	
	<b>Examiner</b> Nam V. Nguyen	<b>Art Unit</b> 2635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                                                                      |                                                                                         |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                                                          | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                                                                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/10/03; 8/20/04; 4/9/04; 3/26/03</u> | 6) <input type="checkbox"/> Other: _____                                                |

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### **DETAILED ACTION**

The application of Beenau et al. for a "method and system for retinal scan recognition biometrics on a fob" filed March 26, 2004 has been examined.

This application is a CIP of 10/340,352 filed January 10, 2003, which is a CIP of 10/192,488 filed July 9, 2002, which claims the benefit of 60/304,216 filed July 10, 2001 and said 10/340,352 filed January 10, 2003, which is a CIP of 10/318,432 filed December 13, 2002 and is a CIP of 10/318,480 filed December 13, 2002, and claims benefit of 60/396,577 filed July 16, 2002.

Claims 1-47 are pending.

### ***Specification***

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The current abstract using phrase "the present invention" and "the invention" is implied and should be avoided. See MPEP 608.01(b).

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the phrase “said system comprising:” is confusing and unclear. It is not understood what is meant by such a limitation. Is the system a transponder-reader transaction system or a biometric security system? What are the different between a system, a transponder-reader transaction system and a biometric security system? Claims 1-22 are rejected for their dependence on Claim 1 and include the same limitations of Claim 1 without correcting the ambiguity.

In claim 1, the phrase “a device configured to verify said proffered retinal scan sample to facilitate a transaction” is confusing and unclear. It is not understood what is meant by such a limitation. What is a device? Is a device in a reader or in a transponder or in a retinal scan sensor? Where is this limitation supported by specification?

In claim 3, the phrase “wherein said retinal scan sensor is configured to facilitate a finite number of scans” is confusing and unclear. It is not understood what is meant by such a

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limitation. What facilitate a finite number of scan mean? What is a finite number? Where is this limitation supported by specification?

Claim 7 recites the limitation "remote database" in line 2. There is insufficient antecedent basis for this limitation in the claim. Also the phrase "wherein said remote database is configured to be operated by an authorized sample receiver" is confusing and unclear. It is not understood what is meant by such a limitation. What exactly is an authorized sample receiver? Is an authorized sample receiver of a reader or an authorized user? Where is this limitation supported by specification?

In claim 17, the phrase "wherein a retinal scan sample is primarily associated with at least one of first user information,..., and wherein a retinal scan sample is secondarily associated with at least one of second user information" is confusing and unclear. It is not understood what is meant by such a limitation. What is the different between primarily and secondarily? What is a user information? What is a first and second information? Is primarily and secondarily includes the same or identical personal information? Where is this limitation supported by specification?

In claim 18, the phrase "configured to begin mutual authentication upon verification of said proffered retinal scan sample" is confusing and unclear. It is not understood what is meant by such a limitation. What is configuring to begin mutual authentication? Is the reader authenticated the transponder, vice versa or both? Where is this limitation supported by specification?

In claim 22, the phrase “wherein said device configured to verify is configured to facilitate the use of at least one secondary security procedure” is confusing and unclear. It is not understood what is meant by such a limitation. What is the device do? Is the device verify or configure? Where is this limitation supported by specification?

In claim 23 and 35, the phrase “detecting a proffered biometric at a sensor communicating with said system to obtain a proffered biometric sample” is confusing and unclear. It is not understood what is meant by such a limitation. Is a sensor detecting a proffered biometric sample? Is the sensor locate in the transponder, in a reader or in a system? What is the different between a proffered biometric and a proffered biometric sample? Where is this limitation supported by specification? Claims 24-34 and 36-47 are rejected for their dependence on Claims 23 and 35 and include the same limitations of Claims 23 and 35 without correcting the ambiguity.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 12-25, 27-30, 33-41, and 43-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kita (US# 6,703,918) in view of Price-Francis (US# 5,815,252).

Referring to claims 1, 23 and 35, Kita discloses a method and a transponder-reader transaction system (i.e. an authentication system) (see Figures 3, 10-11, 14-15, 20 and 24-25) configured with a biometric security system (1) (i.e. a portable information equipment), said system comprising:

a transponder (171) (i.e. a portable information equipment) configured to communicate with a reader (191) (i.e. authentication device) (column 10 line 63 to column 12 line 67; see Figure 10-11); a reader (191) (i.e. authentication device) configured to communicate with said system (197) (i.e. system or server) (column 12 line 6 to 67; see Figure 11); a biometric sensor (8 or 10) configured to detect a proffered biometric scan sample (i.e. authentication data), said biometric scan sensor (8 or 10) configured to communicate with said system (197) (i.e. system or server); and a device (152) (i.e. a control circuit) configured to verify said proffered biometric scan sample (i.e. authentication data) to facilitate a transaction (column 19 line 48 o 67; see Figures 24-25).

However, Kita did not explicitly disclose a retinal scan sensor configure to detect a proffered retinal scan sample.

In the same field of endeavor of biometric identity verification system, Price-Francis teaches that a retinal scan sensor (35) (i.e. a scanner) configure to detect a proffered retinal scan sample (i.e. a scanned retina information) (column 1 line 32 to 65; column 5 line 1 to 17; see



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Figures 1 to 5) in order to identify the identity of a person using the biometric means in a debit or point of sale cards.

One of ordinary skilled in the art recognizes using a biometric retinal scanner for authentication in a portable device of Price-Francis in a portable information equipment of Kita because Kita suggests it is desired to provide that the portable information equipment includes plurality of biometric sensors to authenticate the user (column 10 line 62 to column 12 line 40; column 14 lines 42 to 61; see Figures 10-15) and Price-Francis teaches that a biometric retinal scanner can be used for identification or authentication in a portable device (column 5 line 1 to 17) in order to increase security for using an optical card. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention was made to use a biometric retinal scanner for authentication in a portable device of Price-Francis in a portable information equipment of Kita with the motivation for doing so would have been to secure the verification of the user in the identity verification system for e-commerce.

Referring to Claims 2 and 36, Kita in view of Price-Francis disclose the method and the transponder-reader transaction system of claims 1 and 35, Kita discloses wherein said sensor (155) (i.e. organic measurement sensor) is configured to communicate with said system (197) via at least one of a transponder (171) (column 12 line 6 to 40; see Figures 10-15)

Referring to Claims 3 and 39, Kita in view of Price-Francis disclose the method and the transponder-reader transaction system of claims 1 and 35, Kita discloses wherein said retinal



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scan sensor (176) is configured to facilitate a finite number of scans (column 4 line 20 to column 5 line 9; column 10 line 62 to column 11 line 61; see Figures 1-3 and 10-15).

Referring to Claims 4 and 40, Kita in view of Price-Francis disclose the method and the transponder-reader transaction system of claims 1 and 35, Kita discloses wherein said retinal scan sensor (176) is configured to log at least one of a detected retinal scan sample, processed retinal scan sample and stored retinal scan sample (column 5 lines 55 to column 6 line 43; column 9 line 66 to column 10 line 13).

Referring to Claim 5, Kita in view of Price-Francis disclose the transponder-reader transaction system of claim 1, Kita discloses further including a database (154) (i.e. organic authentication registration data) configured to store at least one data packet (i.e. authentication data), wherein said data packet (i.e. authentication data) includes at least one of proffered and registered retinal scan samples, proffered and registered user information, terrorist information, and criminal information (column 10 line 62 to column 11 line 14; column 12 line 6 to 67; see Figures 10-15).

Referring to Claim 6, Kita in view of Price-Francis disclose the transponder-reader transaction system of claim 4, Kita discloses wherein said database (154) (i.e. organic authentication registration data) is contained in at least one of the transponder (151), transponder reader, sensor, remote server, merchant server and transponder-reader system (column 10 line 62 to column 11 line 14; column 12 line 6 to 67; see Figures 10-15).

Referring to Claim 7, Kita in view of Price-Francis disclose the transponder-reader transaction system of claim 5, Kita discloses wherein said remote database (154) (i.e. organic authentication registration data) is configured to be operated by an authorized sample receiver (356) (i.e. a radio transmission/reception) (column 10 line 62 to column 11 line 14; column 16 lines 42 to column 17 line 39; see Figures 10-15 and 20).

Referring to Claims 12, 43 and 45, Kita in view of Price-Francis disclose a method and the transponder-reader transaction system of claims 6 and 35, Kita discloses further including a device (152) (i.e. a control circuit) configured to compare a proffered retinal scan sample (i.e. organic data input) with a stored retinal scan sample (178) (i.e. registered biometric data) (column 12 lines 6 to 67; see Figure 15).

Referring to Claims 13 and 47, Kita in view of Price-Francis disclose the transponder-reader transaction system of claims 12 and 35, Kita discloses wherein said device (152) (i.e. a control circuit) configured to compare a retinal scan sample (i.e. authentication data) is at least one of a third-party security vendor device and protocol/sequence controller (column 12 lines 6 to 67; see Figure 15).

Referring to Claim 14, Kita in view of Price-Francis disclose the transponder-reader transaction system of claim 12, Kita discloses wherein a stored retinal scan sample comprises a registered facial scan sample (column 12 lines 6 to 67; see Figure 15).

Referring to Claim 15, Kita in view of Price-Francis disclose the transponder-reader transaction system of claim 14, Kita discloses wherein said registered retinal scan sample (178) (i.e. registered biometric data) is associated with at least one of: personal information, credit card information, debit card information, savings account information, and loyalty point information (column 19 line 47 to 67; see Figure 25).

Referring to Claim 16, Kita in view of Price-Francis disclose the transponder-reader transaction system of claim 15, Kita discloses wherein different registered retinal scan samples are associated with a different one of: personal information, credit card information, debit card information, savings account information, and loyalty point information (column 19 line 47 to 67; see Figure 25).

Referring to Claim 17, Kita in view of Price-Francis disclose the transponder-reader transaction system of claim 15, Kita discloses wherein a retinal scan sample (i.e. authentication data) is primarily associated with at least one of first user information (i.e. first authentication registration input) wherein said first information comprises personal information, credit card information, debit card information, savings account information, and loyalty point information, and wherein a retinal scan sample is secondarily associated with at least one of second user information (i.e. first authentication registration input), wherein said second information comprises personal information, credit card information, debit card information, savings account information, and loyalty point information, where second user information is different than first

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user information (column 9 line 49 to column 10 line 13; column 19 line 48 to 67; see Figures 9 and 25).

Referring to Claim 18, Kita in view of Price-Francis disclose the transponder-reader transaction system of claim 1, Kita discloses wherein said transponder-reader transaction system is configured to begin mutual authentication upon verification of said proffered retinal scan sample (column 16 lines 47 to column 17 line 25; see Figure 25).

Referring to Claim 19, Kita in view of Price-Francis disclose the transponder-reader transaction system of claim 1, Kita discloses wherein said transponder is configured to deactivate (i.e. end the process of verification) upon rejection (i.e. not coincident) of said proffered retinal scan sample (column 7 line 53 to column 8 line 23; see Figures 6-8).

Referring to Claim 20, Kita in view of Price-Francis disclose the transponder-reader transaction system of claim 1, Kita discloses wherein said sensor is configured to provide a notification upon detection of a sample (column 5 line 40 to column 6 line 23; see Figure 5).

Referring to Claim 21, Kita in view of Price-Francis disclose the transponder-reader transaction system of claim 1, Kita discloses wherein said device configured to verify is configured to facilitate at least one of access, activation of a device, a financial transaction, and a non-financial transaction (column 19 line 48 to 67; see Figure 25).

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Referring to Claim 22, Kita in view of Price-Francis disclose the transponder-reader transaction system of claim 1, Kita discloses wherein said device configured to verify is configured to facilitate the use of at least one secondary security procedure (column 19 line 48 to 67; see Figure 25).

Referring to claim 24, Kita in view of Price-Francis disclose the method for of claim 23, Kita discloses further comprising registering at least one retinal scan sample (i.e. authentication data) with an authorized sample receiver (8) (column 9 line 66 to column 10 line 59; column 11 line 15 to 61; see Figures 10-11).

Referring to claim 25, Kita in view of Price-Francis disclose the method for of claim 23, Kita discloses wherein said step of registering further includes at least one of: contacting said authorized sample receiver (32) (i.e. a wireless transmission reception section), proffering a retinal scan to said authorized sample receiver (32), processing said retinal scan to obtain a retinal scan sample (i.e. authentication data), associating said retinal scan sample (i.e. authentication data) with user information, verifying said retinal scan sample (i.e. authentication data), and storing said retinal scan sample upon verification (column 9 lines 66 to column 10 line 59; column 11 line 15 to 61; see Figures 10-11).

Referring to claims 27 and 38, Kita in view of Price-Francis disclose the method for of claims 23 and 35, Kita discloses wherein said step of proffering further includes proffering a biometric (i.e. fingerprint) to a biometric sensor (8) communicating with said system to initiate at least one of: storing, comparing, and verifying said biometric sample (i.e. authentication data) (column 9 lines 66 to column 10 line 59; column 11 line 15 to 61; see Figures 10-11).

Referring to claim 28, Kita in view of Price-Francis disclose the method for of claim 23, Kita discloses wherein said step of proffering a retinal scan to a retinal scan sensor (8) communicating with said system to initiate verification further includes processing database information (i.e. authorized data in an organic authentication registration data), wherein said database information (registration data) is contained in at least one of a transponder (151) (i.e. a equipment) (column 10 line 63 to column 11 line 61; see Figures 10-11).

Referring to claim 29, Kita in view of Price-Francis disclose the method for of claim 23, Kita discloses wherein said step of proffering a retinal scan to a retinal scan sensor (8) communicating with said system to initiate verification further includes comparing a proffered biometric sample (i.e. authentication data) with a stored biometric sample (i.e. organic authentication registration data registered in the organic authentication registration data unit 154) (column 11 line 42 to 61; see Figures 10-11).

Referring to claim 30, Kita in view of Price-Francis disclose the method for of claim 29, Kita discloses wherein said step of comparing includes comparing a proffered biometric sample

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(i.e. authentication data) to a stored biometric sample (i.e. registration data) by using at least one of a third-party security vendor device (37) (i.e. service business) and protocol/sequence controller ((152) (i.e. a control circuit) (column 5 line 40 to column 7 line 52; column 10 line 62 to column 11 line 67; see Figure 1-7 and 10-11).

Referring to claims 33 and 41, Kita in view of Price-Francis disclose the method for of claim 23 and 35, Kita discloses wherein said step of proffering a biometric to a biometric sensor communicating with said system to initiate verification further includes at least one of detecting, processing and storing at least one second proffered biometric sample (i.e. authentication data) (column 9 line 66 to column 10 line 36).

Referring to claim 34, Kita in view of Price-Francis disclose the method for of claim 23, Kita discloses wherein said step of proffering a biometric to a biometric sensor communicating with said system to initiate verification further includes the use of at least one secondary security procedure (i.e. second authentication input section) (column 10 line 50 to 60; column 11 line 42 to column 12 line 4; see Figures 9-11).

Referring to claim 46, Kita in view of Price-Francis disclose the method for of claim 35, Kita discloses wherein said step of verifying includes verifying a proffered biometric sample using information contained on at least one of a local database (i.e. an organic authentication registration data at the equipment 154) (column 11 line 42 to 61; see Figure 10).



Claims 8-10, 26, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kita (US# 6,703,918) in view of Price-Francis (US# 5,815,252) as applied to Claims 1, 23 and 29, and in further view of Murakami et al. (US# 6,483,929).

Referring to claims 8-9 and 26, Kita in view of Price-Francis disclose the method for of claims 1, 23 and 43, however, Kita in view of Price-Francis did not explicitly disclose wherein said retinal scan sensor device is configured with one of a low-intensity light source and an optical coupler and wherein said low-intensity light source is an infrared source.

In the same field of endeavor of a biometric operation and authentication, Murakami et al. teaches that retinal scan sensor device is configured with one of a low-intensity light source and an optical coupler and wherein said low-intensity light source is an infrared source (column 6 lines 42 to 52; column 7 line 33 to column 8 line 43; see Figures 1 to 7) in order to analyze said data to identify a biometric traits of a user.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to recognize using a infrared light to detect a specific part of a biometric traits of a user of Murakami et al. in the biometric comparison of Kita because using a infrared light would improve the reliable and accurate of reading a biometric traits of a user that has been shown to be desirable in the portable authentication device of Kita in view of Price-Francis.

Referring to claims 10 and 31, Kita in view of Price-Francis disclose the method for of claims 1 and 29, Murakami et al. disclose wherein retinal scan sensor is configured to detect and verify retinal scan characteristics including blood vessel patterns (column 1 lines 52 to 67).

Claims 11, 32 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kita (US# 6,703,918) in view of Price-Francis (US# 5,815,252) as applied to Claims 1, 23 and 35, and in further view of Stark (US# 6,116,736).

Referring to claims 11, 32 and 42, Kita in view of Price-Francis disclose the method for of claims 1, 23 and 43, however, Kita in view of Price-Francis did not explicitly disclose wherein said iris scan sensor device is configured to detect and verify pupil dilation and body heat.

In the same field of endeavor of measuring the human eye with a sensor, Stark teaches that retina scan sensor device (10) (i.e. a pupilometer) is configured to detect and verify pupil dilation (column 10 line 12 to column 11 line 26; see Figures 5 to 8) in order to analyze said data to identify an outer perimeter of said a retina.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to recognize the need for analyze to identify the pupil dilation of Stark et al. in the biometric comparison of Kita because identifying the pupil dilation would improve the reliable and accurate verification of the same person that has been shown to be desirable in the portable authentication device of Kita in view of Price-Francis.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g.,

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In re Berg, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-47 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-47 of copending Application No.

10/708,835 in view of Price-Francis (US# 5,815,252).

This is a provisional obviousness-type double patenting rejection.

Referring to claims 1-47, copending Application NO. 10/708,835 claims a transponder-reader transaction system which is the same as of claims 1-47 of Application NO. 10/708,836, however, copending Application NO. 10/708,835 did not explicitly claim include a retinal scan sensor.

In the same field of endeavor of biometric identity verification system, Price-Francis teaches that a retinal scan sensor (35) (i.e. a scanner) configure to detect a proffered retinal scan sample (i.e. a scanned retina information) (column 1 line 32 to 65; column 5 line 1 to 17; see Figures 1 to 5) in order to identify the identity of a person using the biometric means in a debit or point of sale cards.

One of ordinary skilled in the art recognizes using a biometric retinal scanner for authentication in a portable device taught by Price-Francis in the transponder-reader transaction system of a copending Application No. 10/708,835 because a copending Application No. 10/708,835 suggests to use an retinal sensor (paragraph 0151 to paragraph 0154) and Price-Francis suggests it is desired to use a retinal scan sensor or any other alternative biometric sensors in a biometric identification process (column 4 lines 15 to column 5 line 17). Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention was made to use a biometric retinal scanner for authentication in a portable device taught by Price-Francis in a transponder-reader transaction system of a copending Application No. 10/708,835 with the motivation for doing so would have been to have an alternative type of a biometric sensor in an identification transaction system.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Smyth (US# 6,120,461) discloses an apparatus for tracking the human eye with retinal scanning display, and method thereof.

Pare, Jr. et al. (US# 6,269,348) disclose a tokenless biometric electronic debit and credit transactions.

Black (US# 6,307,956) discloses a writing implement for identity verification system.

Glass et al. (US# 6,332,193) disclose a method and apparatus for securely transmitting and authenticating biometric data over a network.

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Prokoski (US# 6,496,594) discloses a method and apparatus for aligning and comparing images of the face and body from different images.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nam V Nguyen whose telephone number is 571-272-3061. The examiner can normally be reached on Mon-Fri, 8:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Horabik can be reached on 571-272-3068. The fax phone numbers for the organization where this application or proceeding is assigned are 571-273-8300 for regular communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nam Nguyen  
December 8, 2005



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